

N O. 2 2 0 2 5

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

ANTONIO HECTOR MILLAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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BRIEF FOR APPELLEE

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APPEAL FROM  
THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

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BRIEF FOR APPELLEE

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JURISDICTION

On January 31, 1966 appellant, Antonio Hector Millan <sup>1/</sup> filed a petition for naturalization in the United States District Court for the Central District of California. Section 310(a) of the Immigration and Nationality Act, 8 U.S.C. §1421, confers upon the district courts of the United States jurisdiction to naturalize persons as citizens of the United States. Appellee believes that the court below had jurisdiction to naturalize appellant notwithstanding

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<sup>1/</sup> The petition for naturalization was filed under the name Antonio Hector Millan, although appellant's deportation proceedings were conducted under the name Antonio Hector Millan-Garcia.



the provisions of Section 318 of the Immigration and Nationality Act; however, because there is some question in this regard, the problem will be more fully developed under Part I of Argument, infra.

On April 13, 1967 the District Court entered an order denying appellant's petition for naturalization [C. T. 11; see also, Petition of Millan, 266 F. Supp. 545 (C. D. Calif. 1967)]; 2/ and since that order was a final decision, this Court has jurisdiction of the present appeal pursuant to 28 U. S. C. § 1291.

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2/ By order filed herein on February 1, 1968 this Court ruled that:

"The record on appeal in this case shall be limited to the following: (1) matter which was part of the record before the district court in proceedings following remand by the Supreme Court; and (2) matter which was part of the record upon the first appeal in this court, No. 19,351. . . ."

The pages of the record of appellant's deportation proceedings which was filed in No. 19,351 will be indicated herein by "R". In No. 19,351 this Court ordered the record augmented by certain documents, which were attached as Exhibits "A", "B", "C", "D", and "E" to Opposition To Petitioner's Motion To Augment Record. The latter documents will be referred to herein as supplemental exhibits, e. g. Supplemental Exhibit "A", Supplemental Exhibit "B", etc.

The record before the district court in proceedings following remand consisted of (1) the Clerk's Transcript of Record, the pages of which will be indicated herein by "C. T. "; (2) the Reporter's Transcript of Proceedings, the pages of which will be indicated herein by "R. T. "; and (3) exhibits received in evidence by the district court, which will sometimes be abbreviated herein as "Ex. ".

References to appellant's Opening Brief will be indicated "Br. ".



## STATEMENT OF THE CASE

On August 9, 1963 the Immigration and Naturalization Service received appellant's Application to File Petition for Naturalization, Form N-400, dated August 1, 1963 [Supplemental Exhibit "A"]. On August 22, 1963, certification of appellant's military or naval service was requested; and said certification, executed by the Department of the Army on October 18, 1963, was received by the Immigration and Naturalization Service on October 24, 1963 [Supplemental Exhibit "B"; see also Ex. 2].

On January 23, 1964, the District Director of the Immigration and Naturalization Service at Los Angeles, California, determined not to withhold the institution of deportation proceedings to allow appellant to petition for naturalization [Supplemental Exhibit "E"]; and on March 17, 1964, deportation proceedings were instituted against appellant, charging that he was subject to deportation under Section 241(a)(1) of the Immigration and Nationality Act, in that at the time of entry he was within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, an immigrant not in possession of a valid immigration visa [R. 77].

After a deportation hearing [R. 12, et seq.; see also Ex. 3] the presiding special inquiry officer on April 3, 1964, ordered appellant deported from the United States to Mexico on the ground charged [R. 5-10, 75]. The deportation order was affirmed by the Board of Immigration Appeals on June 17, 1964 [R. 2-4].



On June 17, 1964, appellant filed in this Court a Petition for Review, challenging his deportability and the order of deportation outstanding against him; and on April 5, 1965, this Court rendered its decision affirming the deportation order [See Millan-Garcia v. INS, No. 19,351, 343 F.2d 825 (9th Cir. 1965)].

Thereafter, appellant filed a Petition for Writ of Certiorari in the Supreme Court of the United States, seeking to review the decision of this Court. The Solicitor General of the United States filed a memorandum in response to the petition which, among other things, pointed out the apparent inconsistency between Sections 318 and 329 of the Immigration and Nationality Act, and suggested that the petition for a writ of certiorari be held on the docket pending final disposition of the naturalization proceeding instituted by appellant [Ex. C, pp. 6, 9]. On November 8, 1965, the Supreme Court rendered the following decision [See Ex. A; see also 382 U.S. 69]:

"The motion for leave to proceed in forma pauperis and the petition for writ of certiorari are granted. The judgment is vacated and the case is remanded to the Court of Appeals upon examination of the entire record and in light of the representations of the Solicitor General that the petitioner will be afforded an opportunity to apply for citizenship and that there will be no deportation proceedings until such determination."



Subsequently on January 11, 1966, this Court made an order pursuant to the decision of the Supreme Court providing, inter alia, that appellant be afforded an opportunity to file a petition for naturalization within a specified time, and further providing that if the naturalization petition was filed within the time allowed, the proceedings in No. 19, 351 "shall be held in abeyance until said petition for naturalization is finally determined" [see Ex. 8].

Appellant timely filed his Petition for Naturalization in the District Court on January 31, 1966. <sup>3/</sup> Appellant was thereafter examined by Designated Examiner Brian H. Simpson [see Ex. 1]; and the designated examiner subsequently recommended that appellant's Petition for Naturalization be denied on the ground that he had failed to establish that he is attached to the principles of the Constitution of the United States and favorably disposed to the good order and happiness of the United States, and on the further ground that appellant had failed to establish that he can take the oath of allegiance to the United States without mental reservation [see Exhibit 5, page 12].

Hearings on appellant's Petition for Naturalization were held before the District Court on March 20, 1967 and March 22, 1967; and on April 6, 1967 the lower court filed its Order Regarding the

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<sup>3/</sup> Apparently appellant's Petition for Naturalization was not made a part of the record in this Court; although his Application to File Petition for Naturalization dated January 31, 1966, is before this Court as Ex. 4. Appellee does not consider appellant's Petition for Naturalization as essential to a decision in this case; however, this Court may wish to direct the Clerk of the District Court to transmit to it a copy of appellant's original Petition for Naturalization so that the record on this appeal may be complete.



Admission of Evidence and Certain Matters Taken Under Submission [C. T. 9]. Thereafter on April 13, 1967 the District Court filed and entered its Order Denying Petition For Naturalization [C. T. 11; see also Petition of Millan, 266 F. Supp. 545 (C.D. Calif. 1967)]. Appellant filed a Notice of Appeal from said order of the District Court on May 2, 1967 [C. T. 26].

### ISSUES PRESENTED

1. Did the District Court have jurisdiction to naturalize appellant in view of the provisions of Section 318 of the Immigration and Nationality Act?
2. Did the District Court err in denying appellant's petition for naturalization?
3. Was appellant denied a fair hearing?

### STATUTES INVOLVED

The statutes involved in the issues in this case, or pertinent portions thereof, are quoted in the Appendix to this Brief.



## ARGUMENT

### I

APPELLEE BELIEVES THAT THE DISTRICT COURT HAD JURISDICTION TO NATURALIZE APPELLANT NOTWITHSTANDING THE PROVISIONS OF SECTION 318 OF THE IMMIGRATION AND NATIONALITY ACT.

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As the Solicitor General of the United States pointed out [Exhibit C, page 6] the application of Section 318 of the Immigration and Nationality Act to bar appellant's naturalization would create an apparent inconsistency. The only ground for appellant's deportation is the fact that he entered the United States without a visa in violation of law. To allow deportation proceedings on this ground to bar appellant's naturalization would conflict with the intent of Congress, expressed in Section 329 of the Immigration and Nationality Act, to authorize an eligible veteran to become naturalized "whether or not he has been lawfully admitted to the United States for permanent residence".

The barring provisions of Section 318 of the Immigration and Nationality Act, and of its predecessor, Section 27 of the Subversive Activities Control Act of 1950 has been applied by the courts upon many occasions [Shomberg v. United States, 348 U.S. 540 (1955); Duenas v. United States, 330 F.2d 726 (9th Cir. 1964); Petition of Terzich, 256 F.2d 197 (3rd Cir. 1958), cert. denied 358 U.S. 843; Banks v. United States, 204 F.2d 583 (5th Cir. 1953); Jew Sing v. United States, 202 F.2d 715 (9th Cir. 1953); United States ex rel Jankowski v. Shaughnessy, 186 F.2d 580 (2nd Cir.

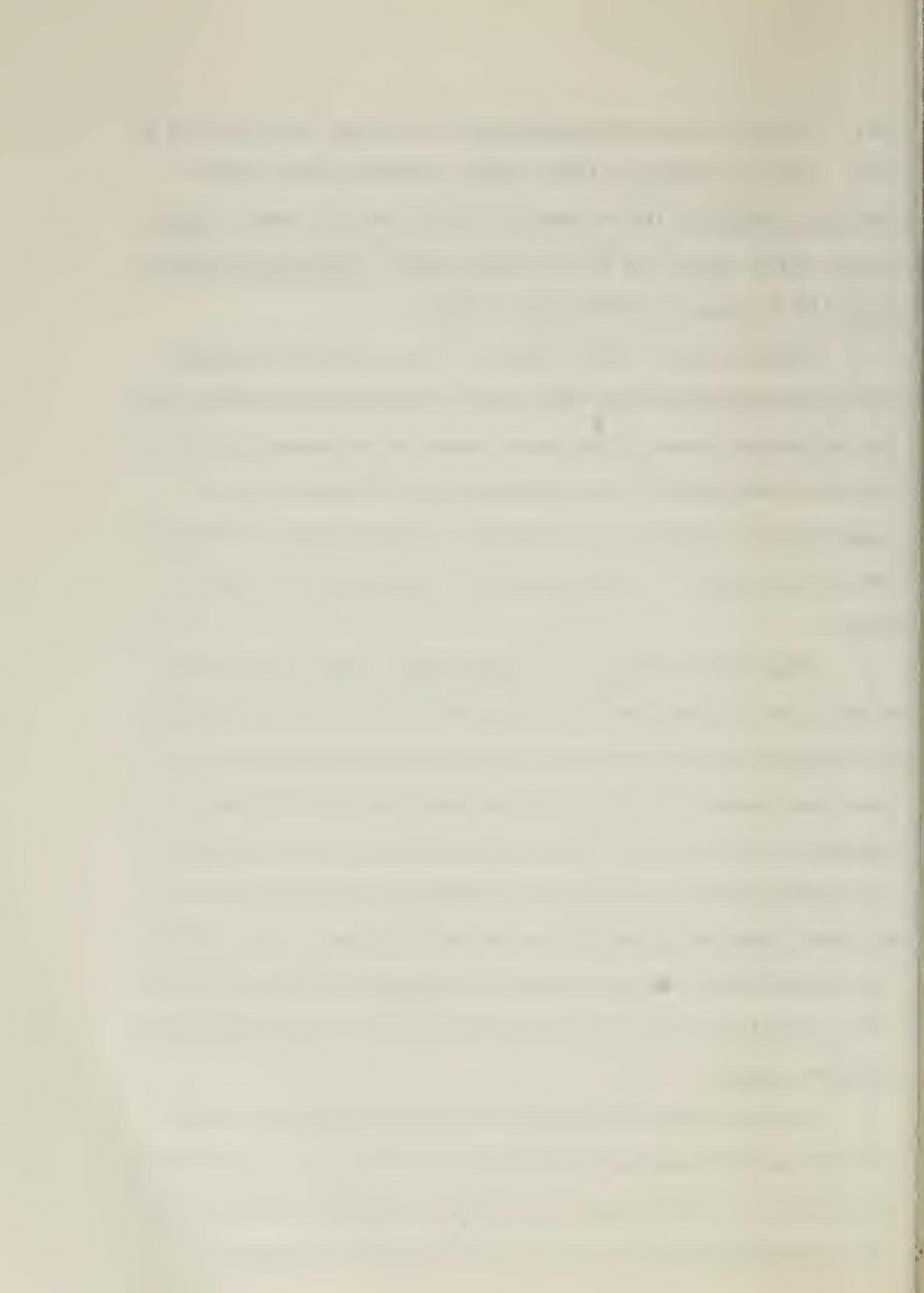


1951); Petition of Yow Leslie Chung, 199 F. Supp. 566 (E.D. N.Y. 1961); Petition of Santos, 169 F. Supp. 115 (S.D. N.Y. 1958); Petition of Horvath, 166 F. Supp. 938 (N.D. W. Va. 1958); In Re Muniz, 151 F. Supp. 173 (W.D. Penn. 1958); Application of Chin King, 124 F. Supp. 911 (S.D. N.Y. 1954)].

However, none of the cases cited above involved the applicability of Section 318 under the factual circumstances here presented. The petitioners in most of the above cases did not seek naturalization under Section 329 of the Immigration and Nationality Act; consequently the apparent inconsistency between Sections 318 and 329, which is the crux of the problem here presented, could not arise.

This Court in Duenas v. United States, supra, was confronted with an inconsistency between Sections 318 and 329 of the Immigration and Nationality Act under circumstances similar to those here present. However, the present case differs from Duenas in that the review of appellant's deportation proceedings is now pending before this Court, having been held in abeyance until appellant's petition for naturalization is finally determined. There was no deportation review pending when Duenas was decided. The same distinction can be drawn between the present case and Petition of Santos, supra.

It is now clear that a draftsman's error led to the present inconsistency between Sections 318 and 329 of the Immigration and Nationality Act; that Congress intended to except Sections 328 and 329 of the Act from the operation of Section 318, but through



inadvertence excepted Sections 327 and 328 instead.

Congress is currently in the process of correcting its error; and perhaps when this cause comes on for hearing the jurisdictional question will have been rendered moot. On March 4, 1968 the House of Representatives passed H. R. 15147 [Congressional Record March 4, 1968, page H-1582]. Section 2 of this Bill amends Section 318 of the Immigration and Nationality Act by striking out "sections 327 and 328" and substituting "sections 328 and 329". Section 4 of the Bill amends Section 329 of the Immigration and Nationality Act to allow an eligible veteran to be naturalized "notwithstanding the provisions of section 318 as they relate to deportability" [See Congressional Record, supra, page H-1574]. The purpose of the amendments was expressed as follows [See Congressional Record, supra, page H-1575]:

"Sections 2, 3 and 4 of this bill are technical amendments to the Immigration and Nationality Act. During the conference on the act in 1952, the words 'sections 327 and 328' were inadvertently incorporated into section 318 of the act instead of 'sections 328 and 329.' The purpose of these amendments is to correct this error."



## II

### THE DISTRICT COURT DID NOT ERR IN DENYING APPELLANT'S PETITION FOR NATURALIZATION.

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#### A. Burden of Proof and Scope of Review.

An alien who seeks to become naturalized as a citizen of the United States has the burden of establishing his eligibility for such citizenship in every respect, and any doubts concerning admissibility must be resolved in favor of the government and against the alien [Berenyi v. Immigration Director, 385 U.S. 630, 636-637 (1966); United States v. Macintosh, 283 U.S. 605, 626 (1931); United States v. Schwimmer, 279 U.S. 644, 649-650 (1929); United States v. Manzi, 276 U.S. 463, 467 (1928)]. As the Supreme Court in Berenyi v. Immigration Director, supra, declared (pp. 636-637):

" . . . When the Government seeks to strip a person of citizenship already acquired, or deport a resident alien and send him from our shores, it carries the heavy burden of proving its case by 'clear, unequivocal, and convincing evidence.' But when an alien seeks to obtain the privileges and benefits of citizenship, the shoe is on the other foot. He is the moving party, affirmatively asking the Government to endow him with all the advantages of citizenship. Because that status, once granted,



cannot lightly be taken away, the Government has a strong and legitimate interest in ensuring that only qualified persons are granted citizenship. For these reasons, it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect. This Court has often stated that doubts 'should be resolved in favor of the United States and against the claimant.' E. g., United States v. Macintosh, 283 U.S. 605, 626. . . ."

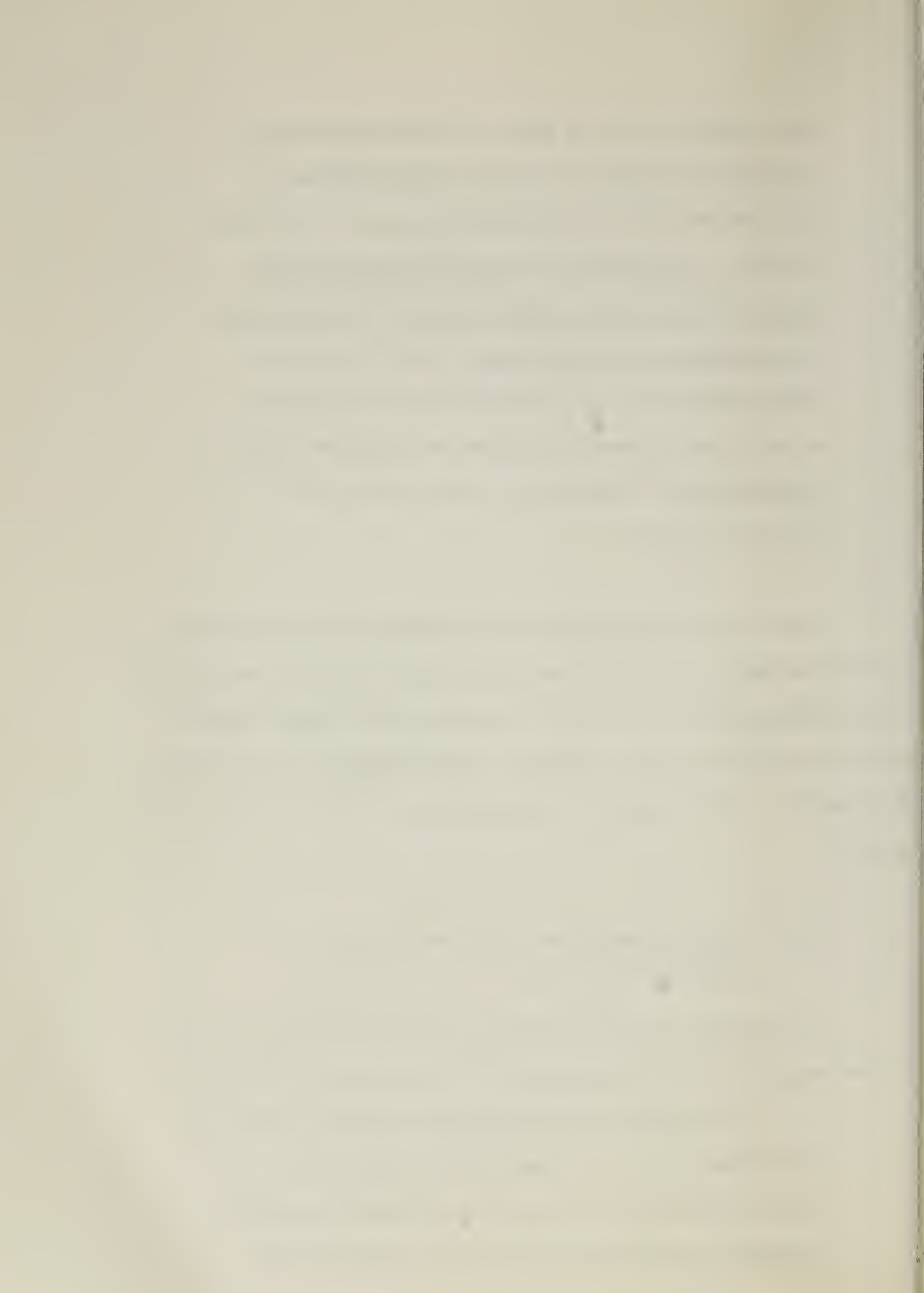
[Emphasis added]

Moreover, on an appeal from the denial of a petition for naturalization, the District Court's findings of fact will not be set aside unless shown to be clearly erroneous [Rule 52(a), Federal Rules of Civil Procedure; Taylor v. United States, 231 F.2d 856, 858 (5th Cir. 1956); Allan v. United States, 115 F.2d 804 (9th Cir. 1940)].

B. The Evidence Was Sufficient to Deny Naturalization.

In its Order Denying Petition For Naturalization, the court below said [C. T. 24-25; see also 266 F. Supp. at pp. 551-552]:

"8 U.S.C.A. § 1427(a) requires that a petitioner for naturalization must establish that during the five years preceding the filing of his petition he has been a person of good moral character, attached to the



principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

" . . . Within the five years from the date of his application to become a citizen the petitioner:

"1. Endeavored to obtain arms and equipment for the overthrow of a foreign government.

"2. Approved the confiscation of private property without due process or payment.

"3. Declared he would not bear arms in the event of armed conflict between the United States and any Spanish-speaking country.

"4. Was ambivalent in his loyalty to the United States.

"5. Stated that he believed in the principles of Communism.

"6. Stated that he taught the principles of Communism, although later retracted his testimony.

"7. Actively worked for the organization known as Fair Play For Cuba.

"The petitioner has not passed the tests for the requirement of naturalization.

"It is ordered that the petition for naturalization be denied. . . ."

The evidence amply supports each of the above quoted



findings itemized by the District Court, and these findings are legally sufficient to justify the denial of appellant's naturalization.

During the years 1961 and 1962 appellant seemed to be much more concerned with the revolutionary activities of Castro, Cuba and other Latin-American countries than he was with the principles of the American Constitution or with the good order and happiness of the United States. During 1961 appellant joined an organization known as Fair Play For Cuba, which organization was designed to support and disseminate information concerning Fidel Castro and the Cuban revolution. While in this organization appellant organized and attended meetings, printed and distributed pamphlets and participated in demonstrations which supported the Castro regime. At one of these meetings movies were shown of the abortive Bay Of Pigs invasion, which appellant was told were filmed by the Cuban Government. During 1961 and 1962 appellant also attended meetings of the July 26 Movement, an organization that worked with Fair Play For Cuba and had similar purposes [Exhibit 1, pages 17-26; Exhibit 3, pages 26-38].

During 1962 appellant's aid was enlisted in obtaining supplies, ammunition and arms to supply a rebel band of 100 men in Nicaragua for the purpose of conducting guerilla warfare in that country and eventually overthrowing the Government; and appellant sought means of getting equipment, arms, support, and money for this guerilla warfare but was unsuccessful [Exhibit 1, pages 34-35].

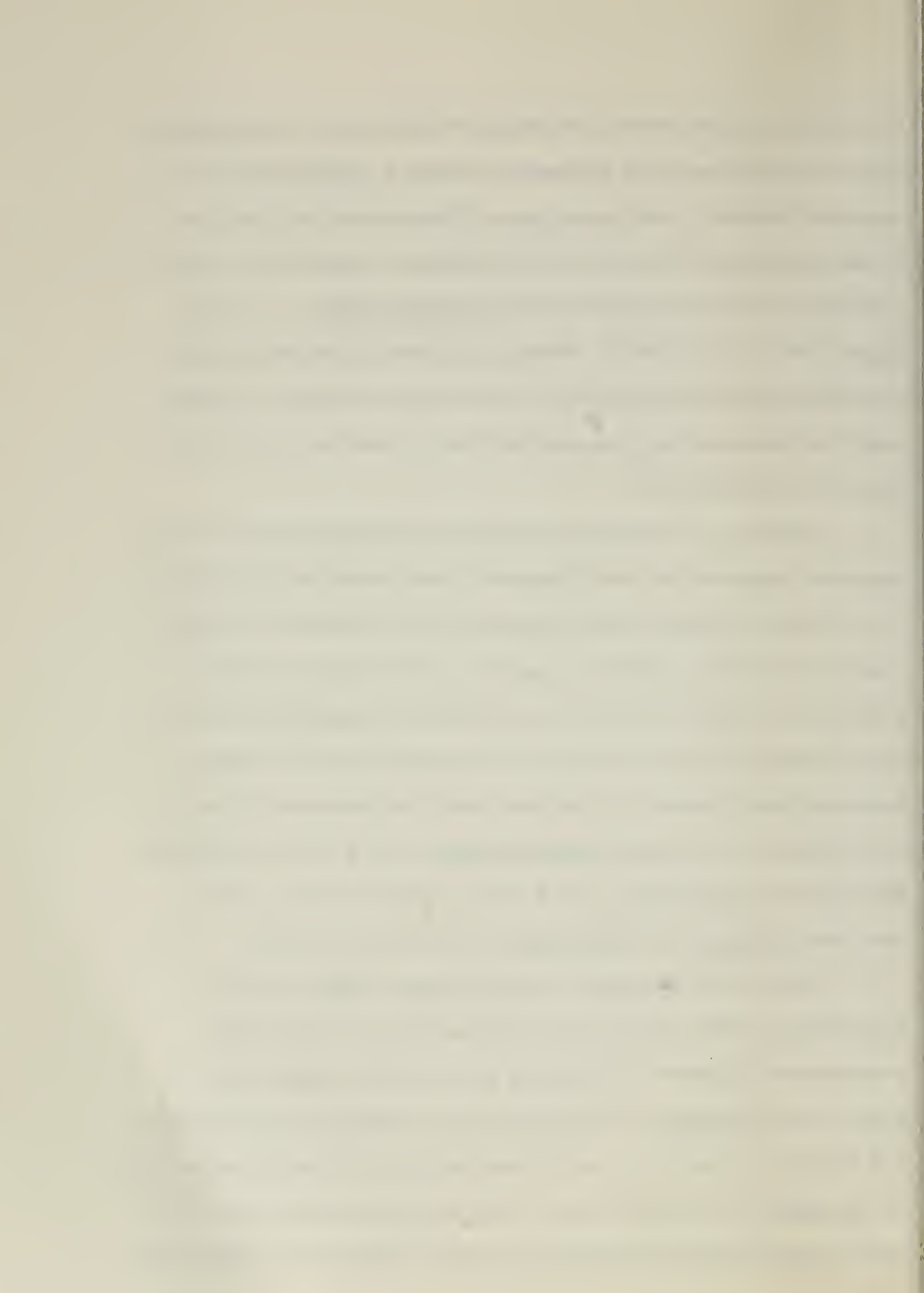
During his deportation hearing, appellant stated that when he was with Fair Play For Cuba he believed in the principles of



Communism and taught the principles of Communism, although he later retracted the latter statement [Exhibit 3, pages 26-29]. If appellant believed in the principles of Communism as practiced by the Communist Party of the United States, such beliefs would clearly bar his naturalization [See Communist Party v. Control Board, 367 U.S. 1 (1961)]. Even if appellant did not fully understand the aims and purposes of Communism, the nature of appellant's beliefs were nevertheless sufficiently doubtful to warrant a denial of naturalization.

Moreover, during his deportation hearing on April 3, 1964 appellant expressed an unwillingness to bear arms on behalf of the United States against Cuba or against any other Spanish-speaking country [R. 68-69; Exhibit 1, page 37]. This alone would be sufficient to justify the Court in concluding that appellant was not then attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States [Cf. In Re Krause's Petition, 159 F. Supp. 687 (S.D. Ala. 1958); In Re MacKay, 71 F. Supp. 397 (N.D. Ind. 1947); compare, Girouard v. United States, 328 U.S. 61 (1945)].

The rule in Girouard v. United States, supra, has no applicability to this case, since appellant did not claim to be a conscientious objector on religious grounds [See In Re MacKay, supra]; and Thompson v. Immigration and Naturalization Service, 332 F.2d 167, 169-170, cited by appellant [Br. 29] is distinguishable. In Thompson, the question concerning military service was so far fetched that petitioner's equivocal response had no real significance.



On the other hand, appellant's unwillingness during 1964 to bear arms against Cuba was extremely significant, particularly in the wake of the Cuban missile crisis.

Appellant was not denied naturalization because of his membership in Fair Play For Cuba or any other organization. Thus, Thompson v. Immigration and Naturalization Service, supra, and Scythes v. Webb, 307 F.2d 905 (7th Cir. 1962), relied upon by appellant [Br. 29-34] are inapposite. It was appellant's activities, beliefs, and state of mind, rather than membership in any organization, which led the District Court to conclude that he had not met the tests for naturalization.

During the final hearing before the District Court appellant testified that he was in a "mixed up stage" during his deportation hearing in 1964 and didn't know where he stood [R. T. 157]. Appellant said that he now knows where he stands and that he is now willing to bear arms on behalf of the United States and to uphold the Constitution of the United States without any mental reservations whatsoever [R. T. 139-140, 157, 159]. Assuming this to be true, the District Court was nevertheless justified in denying appellant's naturalization; since Section 316(a) of the Immigration and Nationality Act requires a petitioner for naturalization to be attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States for five years immediately preceding the date of filing his petition.



### III

#### APPELLANT WAS NOT DENIED A FAIR HEARING.

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Appellant argues that the decision of the Supreme Court required that his deportation proceedings and the order of deportation outstanding against him be vacated; that the naturalization examiner erred in denying his motion to vacate the deportation order; and that the District Court also failed to consider the effect of the Supreme Court decision [Br. 7, 46-49]. Appellant presented essentially the same argument to this Court in No. 19,351 in his Memorandum on Behalf of Petitioner in Opposition to Suggested Order of U. S. Attorney, Prepared and Submitted in Response to This Court's Directive. Appellant submitted an order to this Court in No. 19,351 which provided for the deportation proceedings to be "vacated and set aside". However, this Court did not approve appellant's proposed order, but instead approved the order submitted on behalf of the Immigration and Naturalization Service [See Exhibit 8].

In any event, neither the naturalization examiner, nor the District Court sitting as a naturalization court, had power to set aside the deportation order against appellant [See Duenas v. United States, 330 F.2d 726, 727-728 (9th Cir. 1964)]. As discussed under Part I of Argument, supra, we do not believe that appellant's naturalization was barred by the provisions of Section 318 of the Immigration and Nationality Act even though an order of deportation



is outstanding against him.

Appellant apparently contends that the record of his deportation proceedings should not have been received in evidence [Br. 7, 46, 49]. <sup>4/</sup> Insofar as appellant's contention is based upon his claim that the deportation proceedings should have been vacated, it has been answered in the preceding paragraphs. Insofar as appellant's contention is based upon the fact that he was not represented by counsel during his deportation hearing, it was answered by this Court in Millan-Garcia v. INS, 343 F.2d 825 (9th Cir. 1965), judgment vacated and case remanded on other grounds, 382 U.S. 69 (1965). Appellant's testimony during his deportation hearing was clearly relevant and otherwise admissible.

Appellant argues that he was denied a fair hearing because of the naturalization examiner's participation in the proceedings before the District Court [Br. 39, et seq.]. During the final hearing appellant called the naturalization examiner as a witness and questioned him exhaustively concerning the reasons for his recommendation [R. T. 76-131]. Appellant also devoted a considerable portion of his opening brief in discussing the naturalization examiner's testimony [Br. 21-27].

In the first place, the decision of the Supreme Court in United States v. Morgan, 313 U.S. 409, 422 (1941) indicates that it may have been improper to call the naturalization examiner as

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<sup>4/</sup> Exhibit 3 appears to contain the deportation hearing for March 24, 1964 only; although the record of the deportation hearing for April 3, 1964 was undoubtedly before the District Court, since it is referred to in that Court's opinion [C. T. 11, 12].



a witness and to probe his mental processes [See also, Air Line Pilots' Association, International v. Quesada, 286 F.2d 319 (2nd Cir. 1961); Securities & Exchange Commission v. Shasta Minerals and Chemical Co., 36 F.R.D. 23 (D.C. Utah 1941)].

But more important, appellant's argument entirely misconceives the nature of the final hearing before the District Court. Where, as in the case at bar, a final hearing is held in open court, such a hearing is a trial de novo, and the District Court makes its own findings upon the evidence adduced before it, rather than merely reviewing the proposed findings of the naturalization examiner [See Section 336 of the Immigration and Nationality Act, 8 U.S.C. § 1447; Application of Murra, 178 F.2d 670 (7th Cir. 1950); Application of Murra, 166 F.2d 605 (7th Cir. 1948); compare: In Re Jow Gin, 175 F.2d 299 (7th Cir. 1949)].

Appellant complains that the naturalization examiner actively participated as an advocate in the District Court and as such undoubtedly influenced the District Court's decision [Br. 39-41]. This is no cause for complaint. This is exactly what the statute contemplates. While Section 335 of the Immigration and Nationality Act, 8 U.S.C. § 1446 provides for the preliminary examination of naturalization petitioners by Service employees designated by the Attorney General and for their recommendation to the court; under Section 336(d), 8 U.S.C. § 1447(d), the Attorney General has the right to appear at the final naturalization hearing before the court, to cross examine the petitioner, etc. In such an adversary proceeding, the naturalization examiner (who represents the Attorney



General) appears not in a quasi-judicial capacity but as an advocate.

It is to be expected that the naturalization examiner will try to persuade the court, just as the attorney for the petitioning alien will try to persuade the court. This does not detract from due process, since the naturalization examiner's recommendation is not binding on the court. The hearing is de novo and the court makes its own decision on the evidence before it. The District Court in the present case categorically stated that it had "arrived at its judgment independently of any findings and recommendation of the naturalization examiner" [C. T. 3; see also 266 F. Supp. at p. 547]. There is no reason to impugn this assertion by the court.

### CONCLUSION

WHEREFORE, for the reasons set forth above, it is respectfully submitted that the order of the District Court denying appellant's petition for naturalization should be affirmed.

Respectfully submitted,

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CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ James R. Dooley  
JAMES R. DOOLEY







## APPENDIX "A"

Section 318 of the Immigration and Nationality Act, 8 U.S.C.

§ 1429, provides in pertinent part:

" . . . Notwithstanding the provisions of section 405(b), and except as provided in sections 327 and 328 no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act. . . ."

Section 329 of the Immigration and Nationality Act, 8 U.S.C.

§ 1440, provides in pertinent part:

"SEC. 329. (a) Any person who, while an alien or a noncitizen national of the United States, has served honorably in an active-duty status in the military, air or naval forces of the United States during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, or during a period beginning June 25, 1950, and ending July 1, 1955, and who, if separated from such service, was separated under honorable conditions, may be naturalized as



provided in this section if (1) at the time of enlistment or induction such person shall have been in the United States, the Canal Zone, American Samoa, or Swains Island, whether or not he has been lawfully admitted to the United States for permanent residence, or (2) at any time subsequent to enlistment or induction such person shall have been lawfully admitted to the United States for permanent residence. . . .

"(b) A person filing a petition under subsection (a) of this section shall comply in all other respects with the requirement of this title, except that --

(1) he may be naturalized regardless of age, and notwithstanding the provisions of section 331 of this title;

(2) no period of residence or specified period of physical presence within the United States or any State shall be required;

(3) the petition for naturalization may be filed in any court having naturalization jurisdiction regardless of the residence of the petitioner;

(4) service in the military, air, or naval forces of the United States shall be proved by a duly authenticated certification from the executive department under which the petitioner served



or is serving, which shall state whether the petitioner served honorably in an active-duty status during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, or during a period beginning June 25, 1950, and ending July 1, 1955, and was separated from such service under honorable conditions; and

(5) notwithstanding section 336(c) of this title, the petitioner may be naturalized immediately if prior to the filing of the petition the petitioner and the witnesses shall have appeared before and been examined by a representative of the Service.

\* \* \* \*

Section 316 of the Immigration and Nationality Act, 8 U. S. C.

§ 1427 provides in pertinent part:

"SEC. 316. (a) No person, except as otherwise provided in this title, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present



therein for periods totaling at least half of that time, and who has resided within the State in which the petitioner filed the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

\* \* \* \*

